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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/802,932	03/12/2001	Marco Francia	Q-63527	7225

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EXAMINER

SHERRER, CURTIS EDWARD

ART UNIT PAPER NUMBER

1761

DATE MAILED: 12/05/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.		Applicant(s)	
	09/802,932		FRANCIA, MARCO	
	Examiner		Art Unit	
	Curtis E. Sherrer, Esq.		1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07/29/03.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) 7 and 8 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: |

DETAILED ACTION

Election/Restrictions

Claims 7 and 8 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected processes, there being no allowable generic or linking claim.

Election was made **without** traverse.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-6 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The preamble of the claims does not utilize one of the commonly accepted phrases "consisting," "consisting essentially" or "comprising."

Claim 1 is indefinite because there is no antecedent basis for the phrases "the fermenting liquid," "the mass of liquid" and "the layer of marc."

Claim 3 is indefinite because the scope of the phrase "substantially cylindrical" is unknown.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

Art Unit: 1761

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 4 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Francia (USPN 6,279,457) in view of Kalina (USPN 4,743,451).

Francia teaches the claimed apparatus except for an uplift pipe that has oxygen injecting means, a second outlet that feeds liquid into the main vat, and selective valve means allowing for the control of the first and second outlets. See Figures 1-2 and the description of said figures. Kalina teaches the well known method of injecting oxygen into fermenting must in a single vat, whereby in a closed circuit, an air lift pump is injected with oxygen, which is dissolved by the time the must is returned to the bottom of the vat. (Col. 1, line 66 to col. 2, line 11). It would have been obvious to those of ordinary skill in the art to inject oxygen in a recycle pipe as shown by Kalina in the process of Francia so that the oxygen will be fully dissolved in the circulating must.

Neither of the above cited references teaches whether the oxygen is injected before or after a control valve. The reversal or rearrangement of parts is *prima facie* obvious. See *In re Gazda*, 219 F.2d 449, 104 USPQ 400 (CCPA 1963); *In re Japiske*, 181 F.2d 1019, 86 USPQ 70 (CCPA 1950); *In re Kuhle*, 526 F.2d 553, 188 USPQ 7 (CCPA 1975). It would have been obvious to those of ordinary skill in the art to inject oxygen either prior to, or after, the control valve because the reversal or rearrangement of parts is *prima facie* obvious.

Art Unit: 1761

Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Francia (USPN 6,279,457) in view of Kalina (USPN 4,743,451) in further view of applicant's admissions (Page 5 of instant specification).

Both Francia and Kalina are silent with respect to the injector means of claim 2. Applicant admits that these valves are well known in the art, such as that disclosed in T097A000749 (published Feb. 25, 1999 as DE019837201A1). It would have been obvious to those of ordinary skill in the art to use the well known valves in the apparatus of Francia in view of Kalina as these valves are well known and used in the wine art.

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Francia (USPN 6,279,457) in view of Kalina and in further view of Leedham *et al.* (USPN 4,652,451)("Leedham").

Both Francia and Kalina are silent with respect to the use of a control unit. Leedham teaches the control alcoholic fermentations whereby oxygen is injected in to recycle pipe 5 via pump 6. (Fig. 1 and description). The central controller, shown in Fig. 2, controls the rate of oxygenation. Case law holds that automating a manual process is *prima facie* obvious. *In re Venner*, 262 F.2d 91, 120 USPQ 193, 194 (CCPA 1958) (The court held that broadly providing an automatic or mechanical means to replace a manual activity which accomplished the same result is not sufficient to distinguish over the prior art.). It would have been obvious to those of ordinary skill in the art to control the rate of oxygenation of Francia in view of Kalina as it is more efficient.

Conclusion

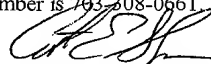
Claim 3 is allowable over the prior art.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Curtis E. Sherrer, Esq. whose telephone number is 703-308-3847.

The examiner can normally be reached on Tuesday-Friday, 8AM-6:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 703-308-3959. The fax phone number for the organization where this application or proceeding is assigned is 703-305-3602.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.



Curtis E. Sherrer, Esq.
Primary Examiner
Art Unit 1761